



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/171367

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 8, 2016, under Wis. Stat., §49.45(5), to review a decision by the Division of Health Care Access and Accountability (DHCAA) to deny Medical Assistance (MA) authorization for gastric bypass surgery, a hearing was held on February 24, 2016, at Madison, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner meets the criteria for approval of bypass surgery.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

I

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Written submission of [REDACTED], M.D.

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a 64-year-old resident of Dane County who receives MA.
2. Petitioner has morbid obesity with sleep apnea, asthma, arthritis, and chronic kidney disease. She had a non-obesity related cardiomyopathy in 2008 that was resolved.
3. On September 10, 2015 Dr. [REDACTED] requested prior authorization to perform gastric bypass surgery. By a letter dated November 24, 2016 the DHCAA denied the request.
4. Petitioner's record showed that she is 5'4", 254 pounds, with a body mass index of 43.57. Although she has apnea she uses a CPAP machined with reports that she sleeps nine hours per night. She has hypertension that is controlled with medication.

## **DISCUSSION**

Wis. Stat., §49.46(2)(f) provides as follows concerning MA benefits: “Benefits under this subsection may not include payment for gastric bypass surgery or gastric stapling surgery unless it is performed because of a medical emergency.”

The criteria for approval of a gastric bypass, as of September 1, 2011, are as follows:

The approval criteria for PA requests for covered bariatric surgery procedures include ... the following:

□ The member has a body mass index greater than 35 with at least one documented high-risk, life-limiting comorbid medical conditions capable of producing a significant decrease in health status that are demonstrated to be unresponsive to appropriate treatment. There is evidence that significant weight loss can substantially improve the following comorbid conditions:

- Sleep apnea.
- Poorly controlled Diabetes Mellitus while compliant with appropriate medication regimen.
- Poorly controlled hypertension while compliant with appropriate medication regimen.
- Obesity-related cardiomyopathy.

*ForwardHealth Update*, No. 2011-44, effective September 1, 2011. There also must be documented prior attempts to lose weight, three months participation in a weight loss program, and medical and psychological evaluations to determine if the person is an appropriate candidate for such surgery.

The use of the Department’s periodic Updates to set MA coverage guidelines is approved by law. See Wis. Admin. Code, §DHS 108.02(4). The criteria at issue here were drafted because of the mandate that gastric bypass is limited to medical emergencies. Wis. Admin. Code, §DHS 107.06(4)(h).

Although petitioner had two doctors testify about the benefits of the proposed surgery, I must conclude that the denial was correct. Petitioner’s condition at present has responded to appropriate treatment. She is sleeping sufficiently with the use of the CPAP machine. Her medical conditions are controlled with medication and her own hard work. Petitioner has the comorbid conditions, but they have been responsive to treatment. I thus must conclude that the denial was correct.

## **CONCLUSIONS OF LAW**

The DHCAA correctly denied the request for gastric bypass surgery because petitioner’s condition does not meet the definition of a medical emergency.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

## **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

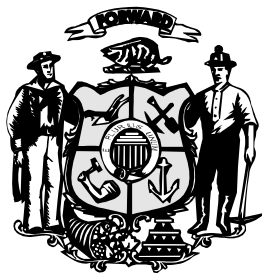
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 1st day of March, 2016

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\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 1, 2016.

Division of Health Care Access and Accountability